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9 UNITED STATES BANKRUPTCY COURT
10 EASTERN DISTRICT OF CALIFORNIA
11 FRESNO DIVISION

12 In re:) Case No.: 2011-10912
13)
14 JAMIE THOMAS and) DCN: KB-5
15 JAMES THOMAS,) Chapter 11
16)
17) DATE: May 25, 2011
18 Debtors.) TIME: 2 P.M.
19) PLACE: 1st floor, 1300 18th
St., Bakersfield, CA
Judge: Whitney Rimel

20
21
22 MOTION TO VALUE COLLATERAL (28710 Gleneagle Court,
23 Tehachapi, CA 93561)

1 **I. Introduction**

2 1. On January 26, 2011, Debtors filed their voluntary
3 petition for relief under the United States Bankruptcy Code.
4 (11 U.S.C. §101, et seq.). The case was filed under Chapter 11
5 of that title. No trustee has been appointed and the Debtors
6 continue in possession of their property and are operating and
7 managing that property as the Debtors in Possession. Among the
8 assets owned by Debtors is real property located at 28710
9 Gleneagle Court, Tehachapi, CA 93561 ("Property"). The Property
10 is legally described as:

12 Lot 92 in Block N of Tract No. 3445, in the Unincorporated
13 Area of the County of Kern, State of California, as per Map
14 recorded April 23, 1971, in Book 20, Pages 166 to 200,
15 inclusive, and in Book 21, Pages 1 to 61, inclusive, of
16 Maps in the Office of the County Recorder of said county.

17 A.P.N. # 317-520-52-00

19 2. The Property is subject to the following encumbrances
20 of record as of the Petition Date:

21 a. 1st deed of trust:

22 America's Wholesale Lender

23 Kern County Doc #0205201679

24 Date recorded: 7/29/2005

25 Amount of claim secured by lien: \$403,331

27 b. 2nd deed of trust:

28 Motion to Value Collateral (28710 Gleneagle Court, Tehachapi, CA 93561)

1 JP Morgan Chase Bank, N.A.

2 Kern County Doc #0206256608

3 Date recorded: 10/16/2006

4 Amount of claim secured by lien: \$250,209.23

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6 Copies of the deeds of trust are attached to Exhibits A through
7 J in Support of Motion to Value Collateral (28710 Gleneagle
8 Court, Tehachapi, CA 93561), as Exhibits A and B.

9
10 3. Debtors request determination by the Bankruptcy Court
11 that:

12 a. The value of the Property is \$390,000.

13 b. The amount of the claim held by JP Morgan Chase Bank,
14 N.A., secured by the second deed of trust is \$0.00 for
15 purposes of the Chapter 11 case; and

16 c. The claim secured by the second deed of trust against the
17 Property is a general unsecured claim for the purposes of
18 Debtors' Chapter 11 Plan.

19
20 4. Debtors believe that the value of the Property is
21 \$390,000. Debtors belief is based on the opinion of Jeremy C.
22 Jans, of Jeremy C. Jans, Inc. Appraisal Firm, as a real estate
23 appraiser, and his analysis of comparable sales in the area.
24 The Appraisal of Jeremy C. Jans of the Property is attached to
25 Exhibits A through J in Support of Motion to Value Collateral
26 (28710 Gleneagle Court, Tehachapi, CA 93561) as Exhibit C.

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1 **II. Authorities**

2 5. 11 U.S.C. 506(a) provides, in pertinent part, that a
3 creditors' secured claim is limited to the value of its
4 collateral.

5 (1) An allowed claim of a creditor secured by a lien on
6 property in which the estate has an interest, ... is a
7 secured claim to the extent of the value of such
8 creditor's interest in the estate's interest in such
9 property, ... and is an unsecured claim to the extent
10 that the value of such creditor's interest ... is less
11 than the amount of such allowed claim. Such value
12 shall be determined in light of the purpose of the
valuation and of the proposed disposition or use of
such property, and in conjunction with any hearing on
such disposition or use or on a plan affecting such
creditor's interest.

13 11 U.S.C. §506(a)(1).

14 Bankruptcy Rule 3012 provides:

15 The Court may determine the value of a claim secured
16 by a lien on property in which the estate has an
17 interest on motion of any party in interest and after
18 a hearing on notice to the holder of the secured claim
and any other entity as the Court may direct.

19 This means that the Court can determine the Residence's value by
20 motion and that Debtors do not have to file an adversary
21 proceeding under Bankruptcy Rule 7001. See *In re Shook*, 278 B.R.
22 815, 823 (B.A.P. 9th Cir. 2002).

23 6. The claim secured by the second deed of trust against
the Property is unsecured if the Bankruptcy Court determines
24 that the value of the Residence is \$390,000. This is true
25 because the America's Wholesale Lender claim secured by the
26

1 first deed of trust exceeds the value of the Property and there
2 is no equity to which the second deed of trust can attach. See
3 *U.S. v. Ron Pair Enterprises*, 489 US 235, 239-40 (1989).

4 7. 11 U.S.C. Section 1123(b) (5) does not impede the Court
5 from (i) determining the value of the Property under 11 U.S.C.
6 506(a) or (ii) treating the claim secured by the second deed of
7 trust in excess of the Property's value as a general unsecured
8 claim under the Chapter 11 Plan. *c.f.* *In re Lam*, 211 B.R. 36
9 (B.A.P. 9th Cir. 1997) (Interpreting same language found in
10 1322(b) (2)); *In re Zimmer*, 313 F.3d 1220 (9th Cir. 2002) (It is
11 appropriate to use Chapter 13 cases law to interpret analogous
12 Chapter 11 provisions).

13 8. Jeremy C. Jans is competent to testify as to the value
14 of the Property. As a real estate appraiser, Jeremy C. Jans is
15 competent to testify under Federal Rules of Evidence, Rules 702-
16 705.

17

18 **III. Conclusion and Prayer**

19 WHEREFORE, Debtors pray that:

- 20 1. The Bankruptcy Court grant the Motion to Value Collateral
21 (28710 Gleneagle Court, Tehachapi, CA 93561);
22 2. The Court determine that the value of the Property located
23 at 28710 Gleneagle Court, Tehachapi, CA 93561 is \$390,000.
24 3. The Court determine that the amount of the claim held by
25 JP Morgan Chase Bank, N.A., secured by the second deed of
26 trust is \$0.00 for purposes of the Chapter 11 Plan;

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4. The Court determine that the claim secured by the second deed of trust against the Property is a general unsecured claim for the purposes of the Chapter 11 Plan; and
 5. Debtors be granted such other and further relief as the Court may deem to be just and proper.

Dated: April 18, 2011

/s/ Kirk Brennan